



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 110 of 2021

SPI Insurance Company Limited

...Appellant

Versus

The Director/HOD, Offsite-I Department, Supervision Division, SECP, Islamabad.

...Respondent

&

Appeal No. 86 of 2023

United Insurance Company of Pakistan Limited

...Appellant

Versus

The Director/HOD, Adjudication-I, Adjudication Division, SECP, Islamabad.

...Respondent

Date of hearing:

August 22, 2024

Present:

For the Appellant:

Mr. Ali Ibrahim, Advocate

For the Respondents:

1. Mr. Muhammad Jahangir, Additional Director, Licensed & Unlisted Companies Department, SECP
2. Mr. Shafiq -ur- Rehman, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This consolidated order shall dispose of Appeal Nos. 110 of 2021 and 86 of 2023 filed by SPI Insurance Company Limited and United Insurance Company of Pakistan Limited respectively (collectively "the Appellants").



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2. Appeal No. 110 of 2021 was filed by SPI Insurance Company Limited (SPI Insurance) against the Order dated August 13, 2021 (the Direction Order) passed by the Director/HOD Offsite-I, Department, Supervision Division (HOD, Offsite-I) against SPI Insurance under Section 60 of the Insurance Ordinance, 2000 (the Ordinance).
3. Appeal No. 86 of 2023 was filed by United Insurance Company of Pakistan Limited (United Insurance) against the order dated June 27, 2023 passed by the Director/HOD, Adjudication-I, Adjudication Division, SECP (HOD, Adjudication-I) under Section 12(4) read with Section 11(1)(f), Section 60 and Section 156 of the Ordinance (the Penalty Order) against SPI Insurance¹. HOD, Offsite-I and HOD, Adjudication-I will be collectively referred to as “the Respondents” in this order.
4. The Appellate Bench (the Bench) has noted that Appeal No. 110 of 2021 pertains to the Direction Order under Section 60 of the Ordinance and is not a penal provision hence, no penalty had been imposed in the order, whereas, the matter in Appeal No. 86 of 2023 pertains to the violation of the Direction Order, cognizance of which was taken under Section 156 of the Ordinance, therefore, the penalty had been imposed through the Penalty Order. The Bench has noted that matters in both Appeals are consequential, therefore, the decision in one appeal will *ipso facto* determine the fate of the other appeal.
5. The brief facts of the case are that;
 - i. M/s. Sukh Chayn Valley Limited (SCV) entered into a land purchase agreement dated April 29, 2016 (the Land Agreement) with Mr. Atif Mehmood Kayani and Syed Khalid Hussain of M/s. Legend Gardens (Pvt.) Limited (the Contractors/Sellers) whereby a mobilization advance of Rs. 50 million was paid to the Contractors/sellers. In order to secure the said mobilization advance, an insurance guarantee dated April 30, 2016 issued by SPI Insurance (the Insurance Guarantee) was obtained from the Contractors in favor of SCV. However, due to a dispute between SCV and the Contractors/Sellers, SCV terminated the Land Agreement and demanded encashment of the Insurance Guarantee. The Contractors/Sellers filed a civil suit

¹ SPI Insurance Company Limited had fully merged into United Insurance Company of Pakistan Limited, therefore, instead of SPI Insurance Company, Appeal No. 86 of 2023 was filed by United Insurance Company of Pakistan Limited.



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dated June 28, 2016 against the SCV wherein *inter alia*, it was prayed to restrain the SCV from encashment of the Insurance Guarantee. Later on, the SCV also filed a civil suit dated June 5, 2018 against the Contractors/Sellers wherein *inter alia* it was prayed that the Contractors/Sellers be directed to return the advance of Rs. 50,000,000/- to the SCV. The Civil Court, Islamabad (the Civil Court) under Section 10 of the Civil Procedure Code, 1908, stayed the proceedings in the suit filed by the SCV vide order dated September 19, 2019, and granted the injunction in the suit filed by the Contractors/Sellers vide order dated December 13, 2019. The SCV, challenged both orders before the Islamabad High Court (the IHC). The IHC, through the judgement dated October 22, 2020, *set aside* both the orders passed by the Civil Court (IHC Order). Subsequent to the IHC Order and upon written request of the SCV for encashment of the Insurance Guarantee by SPI Insurance, the Securities and Exchange Commission of Pakistan (the Commission), vide letter dated January 08, 2021, advised SPI Insurance to settle the claim of SCV. In response, SPI Insurance submitted that the Contractors/Sellers had filed a Civil Petition for Leave to Appeal (CPLA) before the Supreme Court of Pakistan (the SC) against the IHC Order. The SCV vide letter dated March 12, 2021 informed the Commission that the Supreme Court vide Order dated February 16, 2021 (the SC Order) has dismissed the CPLA and refused to grant leave against the IHC Order.

- ii. The Commission issued a notice dated February 19, 2021 to SPI Insurance under Section 60 of the Ordinance on account of non-compliance with the provisions of Section 11(1)(e) of the Ordinance. A written reply to the notice was submitted by SPI Insurance vide letter dated March 6, 2021, whereas a hearing in the matter was held on June 16, 2021. In light of the submissions the Commission issued the Direction Order, whereby SPI Insurance was directed to settle the claim of SCV. SPI Insurance preferred to file an Appeal before the Appellate Bench (Appeal No. 110 of 2021) of the Commission against the Direction Order.
- iii. The Civil Court, vide a single Order dated October 27, 2022, dismissed the suit filed by the Contractors/Sellers whereas, the suit filed by SCV was partially decreed to the extent of encashment of the Insurance Guarantee (the Civil Court Order). In view thereof, the Commission vide letter dated November 7, 2022, advised SPI Insurance to ensure implementation of the Civil Court Order, however, SPI Insurance failed to implement the same. SPI Insurance also failed to implement the IHC Order, the SC Order and the Civil Court



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Order for encashment of guarantee of Rs. 50 million. The foregoing state of affairs indicated that SPI Insurance was conducting its business without giving due regard to the interest of policyholders, which, *prima facie*, violated Section 12(4) read with 11(1)(f) of the Ordinance. Therefore, the HOD, Adjudication-I issued a show-cause notice dated January 16, 2023 (the SCN) to SPI Insurance. A written reply to the SCN was submitted by SPI Insurance vide letter dated February 11, 2023, whereas, a hearing in the matter was held on February 16, 2023. After the hearing before HOD Adjudication-I, the Counsel of SPI Insurance vide email dated February 16, 2022 submitted a copy of RFA No. 703 of 2022 filed before the IHC and order of IHC whereby the Civil Court Order was suspended. The Respondent concluded the SCN proceedings and imposed the aggregate penalty of Rs. 4,000,000/- (Rupees Four Million Only) in the following manner;

S.No.	Names	Amount of Penalty (Rs.)
1.	SPI Insurance Company Limited	500,000
2.	Mr. Muhammad Saleem Sheikh, CEO	500,000
3.	Mr. Ihsan Ul Haq Khan, Director	500,000
4.	Mr. Aziz Ullah Memon, Director	500,000
5.	Mr. Mohammad Asghar, Director	500,000
6.	Ms. Tahira Raza, Director	500,000
7.	Mr. Uzman Naveed Chaudhary, Director	500,000
8.	Mr. Khurram Khan, Director	500,000
Total		4,000,000/-

6. The Appellants had preferred the above-mentioned Appeals *inter alia* on the grounds that during the proceedings before the Respondents, various correspondence took place between the Commission and the Appellants, however, the Respondents did not discuss sufficient details on the grounds the Direction Order and the Penalty Order had been passed. The Appellants stated that in terms of Section 24-A of the General Clauses Act, 1897 (the GC Act), every authority and officer, who is empowered to pass any order is required to give reasons for passing such, however, a bare reading of both Orders makes it clear that the Respondents in violation of the mandatory requirements of the GC Act, had passed non-speaking and unreasoned Orders.



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7. The Appellants had taken the plea that the Commission lacks jurisdiction in the current matter, as Section 11(1)(f) read with Section 12(4) and Section 60 of the Ordinance only gives protection to insurance policyholders whereas, the case in hand is about an Insurance Guarantee. The Appellants stated that since SCV is not a policyholder of an insurance policy issued by SPI Insurance, within the meanings contemplated by the Ordinance, the Commission had no jurisdiction to issue the Direction Order and the Penalty Order. The Appellants argued that vide Order dated 19.01.2021 the learned Appellate Bench in Appeal Number 55 of 2020 had highlighted the differences between "Insurance Policy" and "Contract of Guarantee", in the following manner; *"The Bench accedes with the Appellant's argument that the "Insurance Policy" and "Contract of Guarantee" are two different contracts and both have different characteristics and legal requirements. Therefore, the Bench is of the view that application of Section 77 of the Ordinance and Rule 35 of the Rules in the present case seems unwarranted and against the law."* The Appellant also questioned the exercise of powers delegated to the HOD, Offsite -I to issue direction under Section 60 of the Ordinance and stated that the Direction Order is *void ab initio*.
8. The Appellants stated that since the year 2016 the matter of encashment of the Insurance Guarantee had been pending before the court of competent jurisdiction, therefore, it is shocking to note that in Paragraph 17(b) of the Penalty Order, it had been claimed that the payment is 'overdue' to SCV and pendency of appeal before the Appellate Bench is an effort to linger on the overdue payment. The Appellants stated that it shows the mala fide of the Commission in dealing with the matter, and the bias against the SPI Insurance. The Appellants argued that the Commission repeatedly urged SPI Insurance to comply with the IHC Order as well as the SC Orders, whereas, the Commission is not mandated to execute these judicial orders. The Appellant stated that it is also worth noting that these Orders are temporary in nature, and do not reflect the final judgments of the Courts, therefore, in any event, not being final orders, the same cannot be pushed for execution by the Respondents. The Appellants stated that the controversy in issue is already *sub-judice* before the IHC in Regular First Appeal No. 703/2022 titled Atif Mehmood Kiani and another versus M/s. Sukh Chayn (Private) Limited and another. The Appellants stated that the IHC vide order dated December 6, 2022 suspended the operation of the Civil Court Order, therefore, the Commission was not authorized to take cognizance of the matter and vex the SPI Insurance in a repeated manner on the same issue. The Appellants argued that as the matter had already been taken up and heard by the IHC, therefore, any such parallel proceedings taken up by the Commission are prejudice to the case pending adjudication before the IHC. The Appellants further stated that the Commission cannot act as an executing court to implement the orders passed by the courts of competent jurisdiction, therefore, the issuance of the Direction Order and the



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Penalty Order reflect that the Commission had exceeded its jurisdiction and stepped into the shoes of an executing court, by urging the Appellants to comply with the decision of the Courts.

9. The Appellants stated that as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 every person or entity are entitled to a fair trial and due process of law for the determination of civil rights and obligations. In this regard, the Appellants argued that the Commission had no jurisdiction to entertain such disputes which require the recording of evidence by the civil court which are pending with the IHC in appeal. The Appellants stated that in the case cited as 2016 PTD 485 [Paragraph 7] it was observed that the department had violated the fundamental rights of taxpayers because the right to the due process of law such as a notice, an opportunity of hearing, and confronting of evidence collected by the department was a fundamental right of every taxpayer as guaranteed under Article 10-A of the Constitution of Pakistan. The Appellants argued that it is worth mentioning here that neither under the SECP Act, 1997 nor under the Ordinance, the Commission is vested with judicial powers to record evidence and intervene to resolve private disputes to be resolved through the fair trial conducted by a Court within the meaning of Article 175-A and Article 10A of the Constitution of Pakistan. The Appellants stated that it is pertinent to mention here that the HOD, Adjudication-I had imposed the penalty of Rs. 500,000/-, (Rupees Five Hundred Thousand) each on seven (7) members of SPI Insurance Board of Directors for the alleged contravention of the Ordinance, however, neither any evidence was produced against the directors nor were they heard in their personal capacity.
10. The Appellants stated that the Commission had exercised its powers just to penalize the Appellants in any manner possible. The Appellants stated that alleged "liability" of the Insurance Guarantee has not been established against the Appellants because the matter has not been decided by the IHC, therefore, the Appellants are not bound by the conditions put forth by the Commission. The Appellants stated that it may be noted that the Superior Courts of Pakistan have, time and again, ruled that in statutes where penal consequences may flow from a "liability" of a party, that liability has to be established by a court through a judicial process and cannot be affixed simply because an executive authority labels it as such. The Appellants stated that the liability has to be proven by a court of law before the application of Section 11(1)(f) and Section 60 of the Ordinance.
11. The Appellants stated that without prejudice to any arguments taken herein, it must be noted here that the Commission cannot exercise its powers under Section 60(1) of the Ordinance until specific rules are made



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by the Federal Government. The Appellants argued that there is merely a reference to Section 60 under Rule 25 of the Insurance Rules, 2017, and in fact, provides even further powers to the Commission to act as it deems appropriate. The Appellants stated that with the bare perusal of the provisions of law, it becomes clear that the rules had to be made specifically to structure the discretion and exercise of power by the Commission in the issuance of directions. The Appellants had taken the plea that under Rule 25 of the Insurance Rules, 2017, there is no expansion or procedural substance upon which the Commission can take action, which therefore inevitably leads to a colorable exercise of power. The Appellants further argued that Rule 25 of the Insurance Rules, 2017 does not qualify or come up to the threshold provided by the proviso to Section 60(4) of the Ordinance, therefore, in the instant scenario, the Commission cannot issue the Direction Order to comply with the Orders of the Courts.

12. The Appellants stated that no direction has been given to the Appellants by the IHC or the Supreme Court for encashment of the Insurance Guarantee, therefore, the question of compliance does not arise. The Appellants stated that the Arbitration clause provided in the Insurance Guarantee mandates that any dispute between the guarantor, contractor and employer shall be resolved through arbitration before encashment, however, this clause had not been implemented.
13. The Appellants stated that an exorbitant penalty of Rs. 4 million had been imposed on the Appellants and its Directors, however, Section 156 of the Ordinance only allows the Commission to impose a penalty of Rs. 1 Million, therefore, the penalty imposed through the Impugned Order is beyond the limit provided therein. The Appellants further stated that a director can only be held liable if s/he is “knowingly a party to the default”, however, the Impugned Order had not established willful default of the directors.
14. The Appellants argued that SPI Insurance had filed a suit under Section 20 of the Arbitration Act, 1940 on March 19, 2021 against the Contractors/Sellers and the SCV for arbitration with the court's intervention. The Appellants further stated that in the said suit it is prayed to restrain the SCV from encashment of the Insurance Guarantee etc.
15. The Appellant has preferred this Appeal *inter alia* on the grounds that the SCN is controversial because powers under Section 156 of the Ordinance have been delegated to different persons. As such delegation of powers under the S.R.O. No. 1545(1)/2019 dated December 6, 2019 (the SRO) constitutes a sub-delegation of power that is not within the ambit of Section 10 of the SECP Act, 1997.



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16. The Respondents rebutted the grounds of Appeals and stated that the Direction Order and the Penalty Order clearly explain the allegations and the Appellants' failure to comply with the requirements of the applicable laws. The Respondents stated that adequate reasons e.g. the Appellants' failure to encash the Insurance Guarantee and to comply with the courts' decisions had been provided in the Direction Order and the Penalty Order. The Respondents stated that in view thereof, they had not violated the requirements of Section 24A of the GC Act.
17. The Respondent stated that the Commission, being a regulator of the insurance sector, is duly authorized to proceed in this manner and is competent to initiate legal proceedings against the Appellants if the applicable law, directions of the Commission, or direction of the courts are violated. The Respondent argued that the case law mentioned in the corresponding para is not applicable in this case. The Respondent stated that it is important to state that while passing the remand order in Appeal no. 55 of 2021, the Appellate Bench had admitted that the Commission had the jurisdiction to entertain matters involving the issuance of a guarantee by United Insurance Company of Pakistan Limited.
18. The Respondents stated that the pendency of an appeal before the Appellate Bench without any restraining order or suspension of the order, does not preclude the Commission from exercising its jurisdiction to proceed against the Appellants. The Respondents stated that the principle of *Res Judicata* is not applicable in this case because the facts and circumstances of both matters are not identical. The Respondent rebutted the Appellants' argument regarding the jurisdiction because the Commission passed the Direction Order and the Penalty Order as per law. The Respondent stated that the Commission being a regulator is responsible for ensuring that its regulated entities are following the law of the land and orders passed by the courts, therefore, the Commission had not overstepped its jurisdiction.
19. The Respondents stated that all parties were provided the adequate opportunity to present their case through written and verbal submissions and accordingly hearing opportunities were also provided to them, therefore, the Appellants' plea regarding the violation of the requirements of fair trial enriched in Article 10-A of the Constitution is incorrect. The Respondent stated that the Commission is a *quasi-judicial* administrative regulatory authority, therefore, it has no judicial powers, however, in the exercise of its functions, it is authorized to exercise quasi-judicial powers to regulate the matters that come under its jurisdiction. The



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Respondents stated that the Appellants had failed to comply with the Direction Order to encash the Insurance Guarantee leading to the passing of the Penalty Order.

20. The Respondents stated that the Supreme Court of Pakistan in para 5 of the Order dated February 16, 2021 stated that the guarantor is under the absolute obligation to pay the guaranteed amount, irrespective of any dispute between the parties regarding breach of the contract for which the guarantee was furnished. The Respondent further stated that in para 4 of the aforesaid Order it is stated that although it would be determined by the trial court after recording of evidence of the parties that which is really at fault, however, Rs. 50,000,000/- can still be encashed by SCV. It was also held that the Appellant's failure to pay the amount of guarantee is a violation of clause No.5.1.3 of the Land Agreement which states that "*the insurance company shall encash the guarantee at the first written demand of the Purchaser unconditionally and without any delay or requirement of confirmation from the Sellers whether or not the Agreement has been breached*". The Respondents stated that in view of the afore-referred express order of the Supreme Court, the Commission directed the Appellants to comply with the Orders of IHC and SC in letter and spirit. The Respondents further stated that the courts had not referred the matter to arbitration, therefore, the Appellants cannot argue that prior to the legal proceedings, the parties of the Land Agreement were required to resolve their disputes through arbitration proceedings.
21. The Respondents rebutted the grounds of Appeal and stated that the SCN had been issued in the exercise of the powers vested under Section 156 of the Ordinance vide the SRO, hence, there is no question of sub-delegation of powers.
22. The Respondents stated that rupees four million is an aggregate figure of the penalty imposed on SPI Insurance and its directors and that Section 156 of the Ordinance does not provide a limit of the aggregate penalty rather it specifies the amount of penalty to be imposed on one person, accordingly, the Respondent instead of imposing a maximum penalty of one million, imposed a penalty of 0.5 million on each individual. Therefore, the Respondent had not breached the limit of penalty under Section 156 of the Ordinance.
23. The Bench has heard the parties and perused the record of both Appeals. The Appellants' argument that the Direction Order and the Penalty Order are non-speaking orders and violative of the requirements of Section 24-A of the GC Act is not tenable, therefore, the Bench is not inclined to endorse it. As a matter of fact and record, the Appellants' submissions are without substance and contrary to the clear verdicts of the IHC,



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Supreme Court and the Civil Court. The Bench has noted that IHC vide order October 22, 2020 *set aside* the Civil Court Order whereby an injunction was granted to the Contractors/Sellers against encashment of the Insurance Guarantee. In its order, the IHC observed that *“if injunction has been granted, the order would amount to changing the agreed terms and conditions of agreement, which will be considered as a frustration qua intent of parties, even the absolute obligation of respondents under the said Insurance Guarantee is regardless of any dispute between the parties, who were aware of the consequence while executing the Insurance Guarantee”*. The IHC Order was upheld by the Supreme Court of Pakistan vide the SC Order, wherein, it had been categorically held that the contract of Insurance Guarantee is a separate contract, therefore, regardless of any dispute between the parties, it has to be fulfilled. The Bench is of the view that although the matter before the IHC and Supreme Court was limited to the extent to adjudicate the matter of injunction and stay of suit, however, while rendering the orders, both the apex courts had made it clear that encashment of Insurance Guarantee could not be withheld on account of dispute between the parties. After the above decisions the Commission issued the Direction Order to the SPI Insurance to settle the claim of the SCV, however, it failed to comply.

24. The Bench noted that the matter in hand is not subject to determination by courts through the recording of evidence, therefore, arguments of the Appellants put forth in this regard are rejected. Notwithstanding stated hereinbefore, it is important to mention that the Civil Court dismissed the suit filed by the Contractors/Sellers for specific performance after recording the evidence from the respective parties and allowing them to cross-examine adversary witnesses, therefore, after the Civil Court Order the Appellants' argument has become redundant. Subsequent to the issuance of the Civil Court Order, the Commission issued the SCN to SPI Insurance for its failure to encash the Insurance Guarantee, therefore, in the Bench's view, initiation of legal proceedings against the Appellants does not suffer any illegality or irregularity. The Bench is of the view that the HOD, Adjudication-I had adequately provided reasons for passing the Penalty Order in paragraph 17, whereas, the provisions of the laws violated by the Appellants had been stated in paragraph 18 of the Penalty Order. The Bench does not doubt that the proceedings of the Direction Order and the Penalty Order are legally correct and both are well-reasoned and speaking orders, therefore, the Appellants' assertion of “non-speaking orders” is without any substance.

25. The Appellants' claim that Sections 11(1)(f), 12(4) and 60 of the Ordinance are only applicable to “insurance policyholders” and are irrelevant in the matter of “Insurance Guarantees” is without any substance hence, we are not inclined to endorse it. The Bench is of the view that being an insurer, SPI



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Insurance was not only authorized to issue insurance policies but was also engaged in credit and suretyship business, therefore, the Commission had rightly proceeded against it and took cognizance of the violations committed by SPI Insurance while doing its business. The Bench has noted that Section 4(3)(a)(vi) of the Ordinance deals with the credit and suretyship business of an insurer, therefore, the Appellants' argument that the Commission lacks jurisdiction to decide the matters involving insurance guarantees is baseless. The Appellants' objection regarding the Commission's jurisdiction with respect to the insurance guarantee business is also self-destructive because, if it is presumed that the Ordinance does not recognize the insurance guarantee business then issuance of the Insurance Guarantee in this case establishes that SPI Insurance was indulging in an unauthorized business activity. The Bench is of the view that SPI Insurance being an "insurer" is regulated under the Ordinance, therefore, the business conducted by it whether it is the issuance of an "insurance policy" or "Insurance Guarantee" is regulated by the Commission, hence, objection with regard to the lack of Commission's jurisdiction is rejected. In view thereof, the Bench has no doubt that issuance of surety or a guarantee is also recognized as a business of an insurer under the Ordinance, therefore, being the regulator of the insurance industry, the Commission is competent to exercise its jurisdiction in case of any violation. Hence, we are of the view that the Direction Order and the Penalty Order are as per law. In the circumstance, the Bench believes that failure to encash the Insurance Guarantee by SPI Insurance manifests that it had failed to meet the criteria for sound and prudent management, therefore, it is liable to the penal consequence for violation of Sections 11(1)(f), 12(4) and 60 of the Ordinance. The Bench also rejects the Appellant's plea that HOD, Offsite-I was not authorized to issue a direction under Section 60 of the Ordinance because the Appellants had failed to provide any plausible reasoning and evidence. The Bench is of the view that acquisition without substance adversely affects the bona fide of the party making such acquisition, therefore, one should be restrained from doing so.

26. The Bench has reviewed the order passed by the Appellate Bench in Appeal No. 55 of 2020 wherein insurance guarantee and insurance policy were discussed, however, it had never been held in the said order that the Commission lacks the jurisdiction to adjudicate the matters involving insurance guarantee. In view thereof, SPI Insurance's reliance on the order passed in Appeal No. 55 of 2020 is misplaced.
27. The Bench is of the view that SPI Insurance is under obligation to settle the claim of Insurance Guarantee because the court of competent jurisdiction i.e. the Civil Court, had decided the matter through the Civil Court Order whereby the suit filed by the Contractors/Sellers for specific performance was dismissed, whereas, the suit filed by SCV was partially decreed to the extent of encashment of the Insurance Guarantee.



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The Bench is of the view that as the Insurance Guarantee was issued by SPI Insurance, therefore, it is liable to pay the amount of the Insurance Guarantee. Furthermore, the IHC and Supreme Court in their orders categorically held that “... *absolute obligation of respondents under the said insurance guarantee is regardless of any dispute between the parties, who were aware of the consequences while executing the insurance guarantee.*” and “*A bank or insurance guarantee that contains a categorical undertaking and impose absolute obligation on the guarantor, i.e. the bank or the insurance company, to pay the guaranteed amount, irrespective of any dispute which may arise between the parties*”. In view of the above abstract of the orders, the Bench believes that the Land Agreement between the Contractors/Sellers and the SCV and the contract of Insurance Guarantee are separate and independent, therefore, SPI Insurance is liable to settle the claim irrespective of any dispute regarding the Land Agreement.

28. The Bench is of the view that issuance of the Direction Order and the Penalty Order does not attract the doctrine of *Res Judicata* because the Direction Order was not a penal action whereas, the Penalty Order is the penal consequence of the non-compliance of the Direction Order. Therefore, the Bench rejects the Appellants’ implied plea that the matter of the Penalty Order is hit by the bar of *Res Judicata*. Furthermore, the Bench rejects the Appellants’ argument that due to the pendency of the Regular First Appeal No. 703-2022 (the RFA) before IHC, the Commission cannot proceed against SPI Insurance. The Bench is of the view that the pendency of RFA before the IHC has no bearing on the proceedings initiated against SPI Insurance as per the regulatory and statutory framework administered by the Commission does not bar the Commission or the Respondents from proceeding against SPI Insurance. In addition to the above, the Bench has noted that the IHC, in an order dated January 23, 2023, upon application of the Contractors/Sellers modified the order dated December 6, 2022, and directed to furnish a surety bond instead of a bank guarantee equal to the decretal amount, however, the Appellants had not provided any evidence that the said order had been complied with. Moreover, the Bench is of the view that no restraining order had been passed against the Commission whereby the Commission was barred by the IHC to exercise its regulatory functions.

29. The Bench is of the view that the Commission is empowered to decide the matter of Insurance Guarantee, which is independent of any dispute between the parties arising from the Land Agreement. Therefore, in our view the Respondents had passed the Direction Order and the Penalty Order as per law and, in this regard, requirements of the due process of law, principles of fair trial including notice of hearing, right to file written comments and an opportunity of hearing were duly observed. In view thereof, the Bench



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believes that *ratio decidendi* of the cited case law (2016 PTD 485) had been duly followed by the Respondents while passing the Direction Order and the Penalty Order. However, it is important to highlight here that the cited case law had been decided by the Inland Appellate Tribunal of Pakistan, therefore, it is not binding on the Appellate Bench. The Bench has noted that the SCN was issued to SPI Insurance and its directors, hence, both were provided an equal and reasonable opportunity to rebut the attribution of violations highlighted through the SCN. Therefore, the Appellants' plea that directors were penalized unheard and without evidence is not tenable. The Bench is of the view that in addition to SPI Insurance, the penalty had been imposed on the Board of Directors because it was the duty of the Board to ensure that SPI Insurance met the criteria for sound and prudent management, however, it failed to do so. In the circumstances, the penalty had been imposed on SPI Insurance and its Board of Directors under Section 156 of the Ordinance.

30. The Bench rejects the Appellants' argument regarding the misapplication of Sections 11(1)(f), 12 and 60 of the Ordinance in the present case. The Bench is of the view that the Appellants are regulated under the Ordinance, therefore, the Commission being the apex regulator of the insurance sector is competent to proceed against SPI Insurance on account of a glaring violation of the Ordinance. The Bench is of the view that as per Section 11(1)(f) of the Ordinance, it is the prime responsibility of any insurance company to ensure that *"the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;"* The provision reproduced above clearly indicates that the conduct of SPI Insurance is against the requirements set out in the applicable provisions of the Ordinance because it failed to encash the Insurance Guarantee upon demand. The Bench is of the view that SPI Insurance's failure to encash the Insurance Guarantee upon demand and after the Direction Order indicated that SPI Insurance had not conducted its business in a sound and prudent manner. Moreover, the Bench believes that non-compliance with the Direction Order had also established that SPI Insurance had also failed to comply with the conditions of registration set out in Section 11 of the Ordinance, therefore, the Bench does not doubt that SPI Insurance and its directors failed to ensure that the business of SPI Insurance is being conducted as per law.

31. The Bench is of the view that the Appellants' argument that the Commission cannot issue the Direction Order unless rules are made under Section 60(4) of the Ordinance is completely baseless because at the time the Direction Order was issued, the Insurance Rules, 2017 were very much in field. The Bench rejects the Appellants' allegation that issuance of the Direction Order is a colorable exercise of the Commission's



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powers. The Bench has perused Rules 25 and 26 of the Insurance Rules, 2017, which provide the procedure to issue a direction under Section 60 of the Ordinance, therefore, we are not inclined to accept that the Direction Order had been passed without adequate procedure. The Bench has noted that as per procedure the Commission issued a notice dated February 19, 2021 to SPI Insurance and a written reply on behalf of SPI Insurance was received vide letter dated March 6, 2021. The Bench has further noted that a hearing in the matter was held on June 16, 2021, thereafter, the HOD, Offsite-I issued the Direction Order. In view thereof, the Bench believes that the Appellants' arguments regarding the unauthorized exercise of the Commission's powers and lack of procedure and law dealing with the issuance of the Direction Order under Section 60 of the Ordinance is a misconceived notion and an attempt to undermine the applicable regulatory and statutory framework.

32. The Bench has perused annexure "F" of Appeal No. 86 of 2023, which is the Civil Court Order. The Bench has noted that while deciding *Issue No. 1*, the Civil Court had held that unilateral termination of the Contract by the SCV is legal because the Contractors/Sellers failed to transfer the land along with the possession as per the terms of the Land Agreement. The Bench has further noted that while deciding *Issue No. 2* the Civil Court declared that the Contactors/Sellers are not entitled to specific performance because they were not the owner of the project land, therefore, the SCV cannot be directed to pay the sale consideration. The Bench has also noted that while deciding *Issue No. 3*, the Civil, Court had held that the Contractors/Sellers failed to perform their part of the obligations under the terms and conditions of the Land Agreement, therefore, they are not entitled to the decree for permanent injunction restraining the SCV seeking encashment of Insurance Guarantee. The Bench has also perused paragraph 34 of the Judgement wherein, while granting relief to the SCV, it had been held that the SCV is entitled to encashment of the Insurance Guarantee. In view thereof, the Bench believes that the Respondents had rightly proceeded against SPI Insurance and passed the Direction Order and the Penalty Order.

33. The Bench is of the view that as per the verdicts of the Supreme Court, the IHC and the Civil Courts Order, the Appellants cannot take the plea that no directions for encashment of the Insurance Guarantee has been made in such decisions. Though, United Insurance or SPI Insurance are not parties in such cases, however, execution and implementation of such order is their responsibility. Furthermore, both the parties of the Land Agreement opted to resolve the dispute through a formal court-driven mechanism, therefore, technically, the clause regarding the arbitration had become redundant. Furthermore, SPI Insurance's suit to restrain the SCV from encashment of the Insurance Guarantee does not bar the Commission from



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implementing its directions and other actions within its regulatory ambit, therefore, in our view this argument is without any substance. Moreover, the dispute between the Contractors/Sellers and the SCV has been before the courts since 2016, however, till the filing of the arbitration suit in 2021, SPI Insurance remained silent and never agitated this issue before the parties or any other competent forum, therefore, the Bench believes that, at this stage, SPI cannot escape from its liability concerning encashment of the Insurance Guarantee. The Bench has also perused the Insurance Guarantee wherein it has been stated that *“employer shall be the sole and final judge for deciding whether the Principal (Contractor) has duly performed his obligations under the Contract or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from employer forthwith and without any reference to the Principal or any other person”*. The SCV being “employer” in this case demanded encashment of the Insurance Guarantee upon the Contractors/Sellers failure to transfer land as per the terms of the Land Agreement, however, SPI Insurance failed to perform its obligation, therefore, the Bench is of the view that SPI Insurance has also breached the terms and conditions of the Insurance Guarantee. The Bench is of the view that the above-referred clause of the Insurance Guarantee has an overriding effect on the proceeding clause of the contract, therefore, SPI Insurance was bound to encash the Insurance Guarantee upon the first written demand, however, it failed to do so.

34. The Bench has pursued the SRO whereby powers under the different administered legislations of the Commission had been delegated to the Commissioners, Heads of Departments and Wing Heads. The Bench is of the view that the Appellant’s objection that the delegation of powers under Section 156 of the Ordinance to Commissioner Insurance, HOD, Adjudication-I and Wing Head, Adjudication-I tantamount to sub-delegation of Commissions’ powers is a misconceived notion, therefore, we reject it. The Bench clarifies that sub-delegation is the process whereby a person to whom powers are delegated further delegates powers to a third person. In the instant case, however, the Commission directly delegated its powers to different persons including the Respondents, therefore, it cannot be considered as sub-delegation.

35. The Bench finds no substance in the Appellants’ argument that the Respondent had imposed an exorbitant penalty. In our view, the Appellants had failed to comprehend that the rupees four million penalty is the aggregate amount of penalties imposed on SPI Insurance and its Board of Directors, thereby, the penalty on each individual i.e. Rs. 0.5 Million, is within the permissible limit of the penalty provided under Section 156 of the Ordinance.



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36. The Bench holds the opinion that the SECP Act, 1997, has a special emphasis on “*to promote efficiency in the conduct of insurance business*” and improvement in the quality of insurance services in the country, therefore, the Commission being a regulator of the insurance sector should be more vigilant in the implementation of the requirements of law and orders passed by courts under the insurance laws. The Bench is of the view that risk mitigation through the issuance of policies or guarantees is the core aspect to ensure investors’ confidence and their fearless participation in the economic activities of the country. The Appellants had not only failed to follow the legal requirements but it also failed to implement the courts’ verdicts, therefore, the Appellants’ conduct had undermined the sanctity of the objectives contained under the SECP Act, 1997.

37. In view of the above, the Bench finds no reason to interfere in the merits of the Direction Order and the Penalty Order, therefore, both Appeals are dismissed without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: **01 JAN 2025**